



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1997

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR97-2423

Dear Mr. Pagan:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 109932.

The City of McAllen (the "city") received a request for information pertaining to two criminal cases. You assert that the information at issue is excepted from disclosure pursuant to section 552.108 of the Government Code. You submitted the information at issue to this office.¹

The Seventy-fifth Legislature amended section 552.108 of the Government Code to read as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

¹We note that the requestor specifically asked for photographs pertaining to the cases. Because no photographs were submitted to this office, we assume that the city either does not have these photographs or that they were already provided to the requestor. If not, the city must do so at this time.

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

See Act of June 1, 1997, H.B. 951, § 1, 75th Leg., R.S. (to be codified at Gov't Code § 552.108).

Prior to amendment, section 552.108 excepted from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Because your request for a decision was received by this office prior to September 1, 1997, the effective date of the amendment to section 552.108, this office gave the city the opportunity to supply additional briefing concerning the applicability of the amended statute to the information at issue.

You assert that "the proper legal standard to apply is the law as it existed before September 1, 1997." We disagree. In *Houston I.S.D. v. Houston Chronicle Pub. Co.*, 798 S.W.2d 580 (Tex.App.--Houston [1st Dist.] 1990), the court determined that the Houston Chronicle's right to requested information did not vest until a final determination was rendered about information requested under the Open Records Act. See Gov't Code § 552.303(a) (when governmental body seeks decision from attorney general, "final determination" occurs when attorney general or court renders decision). Because a final determination about the information at issue came after the Open Records Act was amended, the amended statute was the appropriate law to apply. *Houston I.S.D. v. Houston Chronicle Pub. Co.*, 798 S.W.2d 580 (Tex.App.--Houston [1st Dist.] 1990).

Because you supplied no additional briefing to this office, we base our decision upon our review of the submitted records and information previously supplied to this office. It appears from one record you submitted to this office that the criminal cases are still pending. Thus, section 552.108(a)(1) of the Government Code is applicable to most of the information at issue. See Open Records Decision No. 216 (1978) at 3 (release of information during pending criminal case would interfere with prosecution of crime and law enforcement interests).

However, front page offense and arrest report information must generally be disclosed, since this type of information provides "basic information" about the allegations and arrest. Gov't Code § 552.108(c); see generally *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). You sent to this office a copy of the information that the city provided to the requestor. The information provided to the requestor did not include detailed descriptions of the offenses, which is the type of information considered to be front page offense report information. This type of information must be released to the requestor. The city has discretion to release all or part of the remaining information at issue that is not otherwise made confidential by law. Gov't Code § 552.007

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Enclosures: Submitted documents

Ref.: ID# 109932

cc: Ms. Patricia Sens
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McAllen, Texas 78501
(w/o enclosures)